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COMMERCE FOR BERLINGUETTE/4430, CATHERINE PETERS  
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SUBJECT: INDONESIA IPR - EMBASSY SPECIAL 301 OUT OF CYCLE  
REVIEW SUBMISSION

REF: A) SECSTATE 149667 B) JAKARTA 10444  
C) JAKARTA 10200 D) JAKARTA 8114

1. (SBU) Summary: Embassy Jakarta strongly urges that the Special 301 Committee upgrade Indonesia to Watch List status in its upcoming Special 301 Out-of-Cycle Review (OCR). With a sound legal and regulatory structure in place, the Government of Indonesia (GOI) is demonstrating a growing commitment to improving intellectual property rights (IPR) enforcement and addressing our specific concerns. The newly established National IPR Task Force has held several ministerial and working-level strategy sessions and is focusing on improving public awareness, interagency cooperation and information sharing. The Ministry of Industry (MOI) optical disk (OD) factory monitoring team recently completed initial unannounced visits to all 26 registered OD factories and sent out warning letters ordering non-compliant factories to address their deficiencies. Police across the archipelago have conducted numerous pirate OD vendor and factory raids in recent months, seized and destroyed hundreds of burners and over 4 million pirated ODs, arrested hundreds of suspects, and referred as many as a hundred cases to prosecutors. Although data on prosecutions are sketchy and hard to obtain (for all types of crime, not just IPR), the OD monitoring team has reported that Indonesia courts sentenced a manager of a pirate OD factory to two years prison and an owner/partner of another to 2 months imprisonment. Indonesia's Commercial Courts continue to perform relatively well, although a recent trademark ruling against Intel is a setback. Indonesia Customs continues to press Parliament to accept ex-officio authority contained in a new draft Customs Law and accompanying implementing regulations. With the arrival of two Department of State-funded senior IPR technical advisors and a Resident Legal Advisor with considerable IPR experience, the Mission is extremely well-positioned to push the GOI on IPR enforcement in the coming year. End Summary.

2. (U) This cable supplements Embassy's earlier OCR reporting (refs b, c and d) with further updates on the GOI's enforcement activities, particularly in key areas mentioned in the USG's proposed OCR plan of action. It also identifies key areas of continuing weakness and how a Watch List decision would fit into our strategy for addressing them and maintaining the GOI's forward momentum on IPR enforcement. We have reviewed recent OCR submissions from the International Intellectual Property Alliance (IIPA) and the Government of Indonesia (GOI) and agree with their

general findings and upbeat portrayal of recent GOI IPR enforcement efforts. In our view, the IIPA's recommendation to upgrade Indonesia to Watch List status would appropriately recognize the GOI's recent accomplishments and give senior level GOI officials an incentive to build upon Indonesia's more robust IPR enforcement.

#### National IPR Task Force Ramping Up

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13. (SBU) In the past few months, the newly formed National IPR Task Force has held one ministerial and several working level meetings led by either Minister of Law and Human Rights Hamid Awaluddin, Minister of Trade Mari Pangestu or Director General of IPR Abdul Bari Azed. Task Force working-level members tell us that most of their initial work has focused on establishing national IPR short and medium term plans of action, facilitating better interagency cooperation and information sharing, and raising public awareness about IPR. They note that, with the Task Force in place, coordinating GOI efforts to respond to our current OCR has been much easier than last year. Looking forward, we will encourage the GOI to provide the Task Force with its own budget (currently it relies on contributions from member ministries). We will also encourage the establishment of formal or informal channels of communication between the Task Force and key stakeholders, including domestic and foreign industry bodies, foreign governments, and non-governmental organizations (NGOs).

#### OD Monitoring Team Begin Unannounced Visit

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14. (SBU) The Ministry of Industry reports that over the past few weeks, its OD factory monitoring team completed an initial round of unannounced visits to all 26 OD factories registered in Indonesia and sent out warning letters

ordering non-compliant factories to address their deficiencies. Reports from those visits are mixed, with some factories reportedly inactive and empty, a few failing to use source identification codes (SIDs), and others in apparent compliance. The local expatriate recording industry association (IFPI) representative told us that inactive and empty factories may be a sign that OD factory monitoring and police raids are paying off or, alternatively, that some factories may have been tipped off in advance of the visits.

15. (SBU) In general, the OD monitoring team's reports still lack detailed data needed to effectively monitor factories' operations over time. The Mission's new senior technical advisor from the Department of Justice International Criminal Investigative Training and Assistance Program (DOJ-ICITAP) has worked closely with the MOI on a training program and a blitz of unannounced factory visits scheduled for November. The local IFPI representative has agreed to support these training sessions and join the monitoring team during the November factory visits to ensure proper data collection. Those visits will also provide IFPI with an opportunity to collect sample disks from all registered OD production lines in Indonesia to add to IFPI's worldwide database for tracking pirate ODs back to their source factories. Looking forward, one challenge for our police and MOI senior technical advisors will be to encourage closer cooperation between the OD monitoring team and police on factory visits and raids.

#### Police Enforcement Campaign Continues

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16. (SBU) By all accounts, the police continue to conduct raids of pirate OD vendors and factories. The Jakarta and Surabaya police have been most active, and industry representatives tell us that retail piracy rates have dropped in both cities, particularly in some of the most notorious malls, like Jakarta's Ratu Plaza. As on other crime issues, the police have yet to establish a central

system for collecting standardized data on IPR enforcement actions. Still, the Jakarta Police Special Crimes Unit continues to eagerly provide us, on an ad hoc basis, with summaries of their own enforcement actions.

¶17. (SBU) Most recently, Jakarta police provided us with a report detailing raids since June 20 on ten home industry burner factories, two licensed factories, and one unlicensed factory. During these raids they seized over 250 burners and hundreds of thousands of blank and recorded ODs, sealed at least one replicating machine, and arrested at least 16 suspects. Jakarta police also provided us with another report indicating that they have referred at least 44 IPR criminal cases to prosecutors since April 2006, and another 32 earlier in 2006.

¶18. (SBU) It is not clear what happens to most cases after they are referred to the Attorney General's Office (AGO). Jakarta Police complain that rivalries, suspicions and corruption make it difficult for the police to obtain follow-up information on cases from the AGO. AGO officials complain that police cases are often incomplete. While Jakarta police tell us they suspect prosecutors are cutting deals with suspects, they also insist that there have been a significant number of convictions, perhaps as many as 20. The OD monitoring team has reported that Indonesia courts sentenced a manager of a pirate OD factory to two years prison and an owner/partner of another to 2 months imprisonment. We have repeatedly implored the police and DG for IPR to press the AGO to provide such data, if it exists, but so far none has emerged. The Mission's police senior IPR technical advisor and Resident Legal Advisor will jointly press for closer collaboration between the police and AGO on IPR cases.

¶19. (SBU) The Jakarta police continue to work closely with local MPA and IFPI representatives on some raids, but investigators now also conduct raids on their own. One Special Crimes Unit officer explained that five investigative teams each had standing orders to conduct at least one major IPR raid a week. This is a significant advancement from a year ago, when the Indonesian police party line was that its investigators could not legally conduct IPR raids without formal complaints from rights holders.

#### Customs Ex Officio Authority

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¶10. (SBU) Indonesia Customs continues to press Parliament to accept ex-officio authority contained in a new draft Customs Law and accompanying implementing regulations. Parliament, however, has been sluggish in moving this and other important legislation forward. One Customs official recently told us that Parliament has reviewed and accepted 80 percent of 600 items under discussion in the new law. Unfortunately, any one of the remaining unresolved issues could cause significant delay or be a deal breaker. We also note that the Indonesian private sector has already voiced strong opposition to elements of the draft Customs Law which would appear to provide greater enforcement authority to Customs, without requiring a corresponding improvement in governance among Customs officials. Despite these obstacles, Indonesia Customs has been working around these constraints, particularly when rights holders provide specific information on infringing goods coming into Indonesia. One major U.S. cigarette manufacturer praised Customs for its close cooperation on seizing containers for counterfeit cigarettes originating from China.

#### Courts Botch Intel Case

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¶11. (SBU) Over the course of the last year, local expatriate IPR lawyers have informed us that Indonesia's five Commercial Courts, which have jurisdiction over civil IPR cases, are making fair rulings about 90 percent of the time. Unfortunately, that was not the case in last week's

Jakarta Commercial Court ruling against Intel Corporation. Intel lost a protracted legal battle in 2001 when the Indonesian Supreme Court upheld a lower court decision that "Intel" was not a well known mark and, therefore, local electronics producer PT Panggung had the right to register the Intel mark in Indonesia.

¶12. (SBU) Intel subsequently filed six separate complaints with the Jakarta Commercial Court, noting PT Panggung had never used its registered Intel mark in five instances, and had not used it for at least three years in a sixth instance. Under Indonesia law, failure to use the mark for three years is grounds for its deletion. Last week the Jakarta Commercial Court ruled that while Intel proved that PT Panggung was failing to use its mark in all six instances, Intel had not sufficiently established from what past date PT Panggung stopped using the Intel mark, including the five instances in which PT Panggung had never used it. Intel is appealing the case to the Supreme Court.

#### Other Notable Developments

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¶13. (SBU) In recent months, the Ministry of Trade and Ministry of Justice Directorate General for IPR have collaborated with the EU, Japan and us in hosting a variety of IPR public awareness and training sessions for GOI officials and the broader IP community. The GOI lists many of these seminars, workshops and events in annex 10 of its OCR submission. The Ministry of Justice also recently appointed a new Director of Copyrights Ansori Sinungan who is well informed, articulate and a good English speaker. Previously, he was head of DG IPR's district office in Surabaya, and he deserves partial credit for helping organize the Surabaya police's recent impressive crackdown on OD piracy.

#### Comment: Time is Right for Watch List

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¶14. (SBU) We have leveraged significant progress on IPR enforcement in 2006 through two OCRs and the regular Special 301 review, and IIPA and its member organizations are pleased with recent GOI efforts. While the GOI has not fully satisfied all our OCR proposals, in some areas it has far exceeded our requests, particularly on police enforcement activities. This shows increasing GOI ownership over the IPR issue, a development that is strongly in our interests. It would be unfortunate to fail to reward this ownership and lose current momentum, especially when the Mission, with assistance from USPTO, is poised to assist the GOI in the coming year on difficult issues such as effective factory monitoring and prosecutions. Another consideration is that our GOI IPR contacts, who are doing a difficult job

well, badly need the success of an upgrade to show their efforts are producing positive results. Given these factors, our strong view is that a Watch List decision would be the most effective way forward.

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